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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

TOMMIE LAWSON LYNEX,

Defendant and Appellant.

B208262

(Super. Ct. No. PA 034126)

APPEAL from an order of the Superior Court of Los Angeles County.

Harvey Giss, Judge. Affirmed.

Tommie Lawson Lynex, in pro. per., and Donna L. Harris, under appointment by
the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant, Tommie Lawson Lynex, appeals from a postjudgment order denying his request under Penal Code section 1054.9 for discovery of evidentiary materials allegedly in the possession of the prosecution and law enforcement authorities. We affirm.

FACTUAL BACKGROUND

In 1999 Lynex shot and killed Steven Parsee. The jury convicted Lynex of first-degree murder (Pen. Code, § 187, subd. (a)) and found true the allegation, among others, he personally and intentionally discharged a firearm causing great bodily injury and death (Pen. Code, § 12022.53, subd. (d)). In 2001 we affirmed his conviction, rejecting his argument the evidence showed at most manslaughter based on heat of passion/adequate provocation (Pen. Code, § 192, subd. (a)). (*People v. Lynex* (July 17, 2001, B145639) [nonpub. opn.].)

In 2006 Lynex filed a request with the superior court for copies of trial evidence and exhibits and learned that all exhibits, except two shell casings, had been destroyed. (See Pen. Code, § 1417.1.) Lynex filed an “Ex Parte Motion Order to Produce Notification” requesting a copy of the notice of destruction and copies of the shell casings. The trial court denied his request, and in March 2007 Lynex filed a petition for a writ of mandate to compel production, which we denied. (*Lynex v. Superior Court* (Apr. 19, 2007, B197661).)

In April 2007 Lynex filed a petition for a writ of habeas corpus seeking the same relief as his petition for a writ of mandate sought, namely, a copy of the notice of destruction of evidence and “discovery” of trial exhibits and other documents relating to his murder trial. We denied his petition for a writ of habeas corpus. (*Lynex v. People* (May 11, 2007, B198234).)

Lynex next filed a petition for a writ of habeas corpus to attack his conviction on substantive grounds. The superior court denied his petition on December 20, 2007, finding that Lynex had not provided sufficient facts to justify relief. Lynex filed a petition for a writ of habeas corpus in this court, asserting among other claims,

(1) prosecutorial misconduct, (2) use of allegedly tainted evidence, (3) insufficient evidence to sustain the conviction, (4) bias in jury selection, (5) inadequate self-defense instructions, and (6) ineffective assistance of trial court (for among other reasons, permitting his case file to be destroyed in a flood in trial counsel's record storage facility). We denied Lynex's petition for a writ of habeas corpus. (*Lynex v. People* (Feb. 7, 2008, B204709).)

Lynex filed a motion for discovery in the superior court under Penal Code section 1054.9. The court denied his motion, finding Lynex did not qualify for postjudgment discovery under this provision. Lynex appealed from the court's order denying his request for discovery.

DISCUSSION

We appointed counsel to represent Lynex on appeal and granted counsel's request to take judicial notice of the appellate file in Lynex's appeal from the judgment of conviction. (Evid. Code, §§ 459, subd. (a), 452, subd. (d).) After an examination of the record, counsel filed an "opening brief" in which counsel raised no issues. On October 21, 2008, we advised Lynex he had 30 days within which to personally submit any contentions or issues he wished us to consider. On October 31, 2008, we received a supplemental brief in which Lynex made claims of (1) prosecutorial misconduct, (2) improper reliance on false testimony, (3) improper scientific testimony based on a faulty hypothetical, (4) ineffective assistance of trial counsel, (5) wrongful denial of self-defense instructions, and similar claims pertaining to the conduct of his murder trial.¹ These are the same issues that were, or that could have been, raised in either his previous appeal or previous petitions for a writ of habeas corpus. They do not pertain in any way to the postjudgment order from which he appealed, and Lynex does not argue otherwise. We have examined the entire record and are satisfied that Lynex's appellate counsel has

¹ Lynex's supplemental brief contains as exhibits photocopies of jury instructions, an excerpt from the coroner's report, and excerpts of testimony and argument from the reporter's transcript of his murder trial. It appears Lynex has at least a copy of the appellate record of his murder trial in his possession.

fully complied with the responsibilities of counsel and that no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-278 [120 S.Ct. 746]; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

Penal Code section 1054.9 provides that on prosecution of a postconviction writ of habeas corpus or motion to vacate a judgment, a defendant is entitled to discovery of materials in the possession of the prosecution and law enforcement authorities, to which the defendant would have been entitled at the time of trial, but which the defendant has been unable to secure from trial counsel, despite good faith efforts to do so. (Pen. Code, § 1054.9, subds. (a) & (b).) The statute's provisions for discovery, however, are expressly limited to defendants sentenced to either death or to life in prison without the possibility of parole. (Pen. Code, § 1054.9, subd. (a).) Lynex received an overall term of 50 years to life and did not receive a sentence of either death or life without the possibility of parole. Accordingly, by its terms Lynex was not entitled to discovery under this statute and the trial court did not err in finding Lynex's sentence did not qualify him for postjudgment discovery under Penal Code section 1054.9.

DISPOSITION

The order is affirmed.

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ROTHSCHILD, J.

We concur:

MALLANO, P. J.

WEISBERG, J.*

* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.